

Smart & Thevenet, P.C.

(303) 832-6947 (fax)
(303) 863-9657 (fax modem)

1700 Broadway, Suite 1800
Denver, Colorado 80290
(303) 863-0211

internet address:
smart.thevenet@ossinc.net

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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RE: Proposed Rule Making, NII/SUPERNet at 5 GHz, NPRM, ET Docket No. 96-102,
FCC 96-193, Released May 6, 1996 (the "Rules")

Ladies and Gentlemen:

This firm represents SuperNet, Inc. ("SNI"), a Colorado corporation and successor-in-interest to Colorado SuperNet, Inc. ("CSI"). SNI is a leading provider of Internet-related services. As such, SNI objects to the use of the word "SUPERNet" in the proposed Rules, and in support of its objection, SNI states as follows:

CSI first adopted and used the service mark "COLORADO SUPERNET" (the "Mark") in interstate commerce on July 8, 1987. The Mark has been used in interstate commerce continuously since then. On October 28, 1991, CSI filed a Trademark Application for registration of the Mark with the U.S. Patent and Trademark Office. Since then CSI has (1) diligently and at considerable expense prosecuted its Trademark Application, securing the Mark's eventual registration on the Principal Register on December 19, 1995 (Reg. No. 1,941,917) (the "Registration"); (2) successfully opposed competing efforts to register marks that would be confusingly similar in the marketplace; and (3) successfully defended its right to continue to use the Mark against the claims of others. Indeed, the four years between CSI's Trademark Application and the Registration of the Mark were largely consumed with these efforts to vigorously oppose competing marks and establish the Mark's prior use and bona fides.

The Mark covers "telecommunication network interconnection services." No claim was ever made to the exclusive right to use the word "Colorado," however, and over the years the use of the Mark has in fact evolved in two important ways. First, the word "SUPERNET" has been employed in a more and more prominent manner, to the point where

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today the word is used by SNI without the geographic designation, and proceedings will be initiated shortly to confirm SNI's right to so use the word as a mark without the word "Colorado." Second, the "SUPERNET" Mark has been used in connection with an ever-expanding menu of goods and services offered by CSI, and now SNI, to the point where the marketplace now associates "SUPERNET" with SNI's provision of comprehensive Internet-related services.

Under these circumstances, SNI opposes the use of the word "SUPERNet" in the pending Rules. Such use by the Federal Communications Commission (the "Commission") threatens the same sort of confusion in the marketplace that the Mark's Registration is meant to avoid. This confusion would not only damage SNI, but would be entirely unnecessary. The Notice of Proposed Rule Making in this matter reveals that two petitioners, Apple Computer, Inc. ("Apple") and Wireless Information Networks Forum ("WINForum"), both submitted proposals which resulted in the proposed Rules. Apple refers to its proposal as the "NII Band" proposal, and WINForum refers to its proposal as the "Shared Unlicensed Personal Radio Network" device proposal. The Commission's designation of the "new category of unlicensed equipment" as "NII/SUPERNet devices" thus appears to derive from an arbitrary, though perhaps convenient, combination of Apple's NII Band proposal and the first letters of the five words used by WINForum to describe its proposal. In other words, the label given to the proposal by the Commission does not appear to be necessary since others have been able to describe it using words that are not confusingly similar to SNI's registered Mark.

While SNI states no objection with regard to the substance of the Rules, SNI does assert that an alternative designation for the new category of unlicensed equipment should be used by the Commission and the industry. Such an alternative designation would avoid unnecessarily damaging SNI and its prior use of the Mark, and would further avoid unnecessary confusion in the marketplace.

SNI respectfully urges the Commission to adopt for the equipment that is the subject of the Rules a designation which will not conflict with SNI's Registration of the Mark and its use of the Mark "SUPERNET" in the marketplace. If you have questions or comments concerning the foregoing, please feel free to contact the undersigned.

Very truly yours,
SMART & THEVENET, P.C.

A handwritten signature in black ink, appearing to read "Harlan S. Abrahams", written in a cursive style.

By Harlan S. Abrahams
Of Counsel